IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT

JODHPUR.

J U D G M E N T

R.S.R.T.C. & Another VS. Smt.Ogam & others.

S.B.CIVIL MISC. APPEAL NO. 433 OF 1993
against the judgment and decree dated 13.8.1993 passed by the learned Judge, M.A.C.T. Barmer in Civil Misc. Case No.66/89.

DATE OF JUDGMENT :: 26th MAY, 2006

PRESENT

HON'BLE MR. JUSTICE MANAK MOHTA

Mr. B.S.Bhati, for the appellants.
Mr. S.S. Bhati, for the respondents No.1 to 5.
Mr. R.K.Mehta, for respondent No.8.

BY THE COURT :

This appeal is directed against the judgment and award dated 13.8.1993 passed by the Judge, Motor Accident Claims Tribunal, Barmer in Civil Misc. Case No.66 of 1989 whereby the learned Judge has allowed the claim petition in favour of claimants and has held liable non-claimant-appellants No.1, 2 and 3 jointly and severally to make payment of the awarded compensation of Rs.2,20,000/(-(inclusive of the

amount of Rs.25,000/- awarded under No Fault Liability) with interest @ 12% per annum on the balance amount from the date of filing of the claim petition i.e. 29.7.89 till its realization. In case, the awarded amount is not paid within a period of three months, the interest @ 15% shall be given on the awarded amount from the date of filing the claim petition.

Briefly stated the facts giving rise to the claim petition are that, on 5.11.1993, RSRTC Bus No.3153, which was being driven by Non-claimant No.3-Guman Singh driver rashly and negligently at high speed on the route of Baytu-Barmer, at about 1 Km from village Kawas, hit a Zonga bearing No.DAD 4193 at 8.15 PM, as a result of which, the persons sitting in the Zonga sustained simple as well grievous injuries on their persons. It was alleged in the claim petition that Kanaram who was sitting in the said Zonga received grievous injuries, and on account of that, later on he died. At the time of accident, Kana Ram (deceased) was 20 years old. He was having good physique and he was working as Black-smith and used to earn about Rs.1200/- per month.The claimants are widow,daughter,mother,father and brother of the deceased. They were dependent on the income of Kanaram. He was

bread- winner of the family. The said Zonga was owned by respondent No.7-Smt.Jethi Devi and was insured with United India Insurance Company Limited (respondent No.8).

It was further stated that due to untimely death of Kanaram in the accident, the claimants suffered a loss of income Rs. 5,76,000/- and also suffered mental pain and agony, for that, claimed damages of Rs.50,000/- and also claimed damages for funeral and transportation of the dead-body Rs.5,000/-. Thus, total amount Rs.6,31,000/- was claimed as compensation under the aforesaid heads.

A reply to the claim petition was filed on behalf of non-claimant No.5 (respondent No.8), in which, the Insurance Company denied all the averments made in the claim petition. It was also stated that the claimants are not entitled to take claim from from the Insurance Company. The accident was caused due to rash and negligence of the driver of the Corporation bus, therefore, RSRTC is responsible for paying compensation. It was prayed that the claim petition may be rejected. No reply was filed by the owner and driver of the Zonga.

Another joint reply was filed on behalf of non-claimant-appellants No.1 and 2, in which, the Corporation has denied that the deceased was earning Rs.1200/- per month. The Corporation has further stated that the accident did not occur by rash and negligent driving of the RSRTC bus. In the reply, it was stated that the accident occurred due to rash and negligent driving of the driver of the said Zonga. Thus, the owner of the Zonga is responsible to pay compensation. Further, it was also stated that exorbitant amount of compensation has been demanded by the claimants. It was prayed that the claim petition may be rejected.

On the basis of pleadings of the parties, the following issues were framed :-

" 1-क्या विप्रार्थी सं. 3 ने वाहन बस आर एन पी 3153 को कवास से एक किलोमीटर आगे बाड़मेर की तरफ आम सड़क पर तेजी व लापरवाही से चलाकर जोंगा जीप नं. डी एच डी 4194 के टक्कर मारी जिसके फलस्वरूप कानाराम की मृत्यु कारित हुई। जो जोंगा जीप में सवार था ?

2- क्या प्रार्थीगण मुताबिक आवेदन 6,31,000/- बतौर मुआवजा पाने के अधिकारी हैं ?

3- क्या उपरोक्त दुर्घटना जोंगा जीप नं. डी एच डी 4194 की लापरवाही व गलती से हुई। यदि ऐसा हैं तो इसका क्या असर हैं?

4- सहायता।

The claimants, during trial, examined as AW-1 (Smt.Ogam Devi widow of deceased Kana Ram), AW-2 Achla (father of the deceased), AW 3 Pokar Ram, AW-4 Laloo Bhil, AW 5 Kheta Ram, AW 6 Uma Ram Meghwal and AW 7 Vishnu Lal and also produced relevant documents. In defence, no oral or documentary evidence was produced by the non-claimants' side.

After hearing the parties, the learned Tribunal held that the accident occurred solely due to rash and negligent driving of the Corporation bus, by which, the deceased sustained grievous injuries and ultimately he died. The learned Tribunal awarded a total sum of Rs.2,20,000/- as compensation under the different heads with interest as stated above vide judgment and Award dated 13.8.1989.

Being aggrieved by the judgment and Award dated 13.8.1989 passed by the learned Tribunal in favour of

claimants, the Corporation preferred this appeal before this Court.

I have heard learned counsel for the parties and carefully perused the record of the case.

During the course of argument, the learned counsel for the appellants submitted that the learned Tribunal has not properly appreciated the material and gave erroneous findings on issues. It was contended that no independent witness has been produced to prove rash and negligent driving of the RSRTC bus concerned. The witnesses were the passengers of Zonga Jeep and they were not in a position to observe the occurrence, therefore, the finding on issue No.1 is liable to be quashed. The learned counsel for the appellants contended that the learned Tribunal has not properly determined the quantum of compensation. The learned Tribunal has taken the multiplier of 40, that is not permissible. Like-wise, the compensation has been awarded on the higher side under the different heads. The interest awarded at the rate of 12% per annum and in case of default, penal rate of interest @ 15% p.a. has been awarded, that is against the law. Thus, it was

prayed that the judgment and Award may be set aside and the appeal may be allowed.

On the other hand, the learned counsel for the claimants and for the Insurance Company of Zonga Jeep supported the judgment and Award, and contended that there was no evidence in rebuttal, thus, the learned Tribunal has rightly concluded the issues. It was also submitted by the learned counsel for the claimants that during trial from the claimants' side sufficient evidence has been produced that the deceased was a young person of 20 years and was earning Rs.40-50 per day by doing the work of black-smith and there was no rebuttal from the other side. The learned Tribunal has not properly estimated the daily income and merely on the statement of his wife, assessed the daily income Rs.20/- per day. The deceased was having a big family and he was to maintain out of his income. Thus, taking the actual income of the deceased, the compensation comes to the same amount. No exorbitant compensation has been awarded. The rate of interest is not high, looking to the prevailing rate of interest of the Nationalized Bank at that time. Thus, it was prayed that the appeal may be disallowed.

I have considered the rival contentions of the parties and perused the findings of the learned Tribunal and conclusion drawn thereon.

During trial from the side of claimants, AW 4-Laloo and AW 5-Kheta Ram, AW 6- Umaram Meghwal and AW 7-Vishnu Lal have been examined. AW 4 Laloo, AW 5 Kheta Ram and AW 6 Umaram Meghwal, who were travelling in the same Zonga Jeep. They have stated that the bus of RSRTC was being driven rashly and negligently, that hit the Zonga Jeep resulting in causing serious injuries to the persons who were travelling in the Zonga Jeep. Due to injuries, Kanaram and Pemaram died on the spot. The contention of the appellants that the witnesses were not in a position to see the occurrence, is not tenable. One of the witnesses AW 4 Laloo who was sitting on the front seat of Zonga Jeep has stated that he saw the RSRTC bus, which was coming from the opposite side of the Zonga. Further they are independent witnesses. It is also notable that the police has filed charge-sheet after investigation against the driver of the RSRTC bus. Thus, the finding of the learned Tribunal in this respect is correct and deserves to be maintained. During trial from the claimants' side

on the point of income of the deceased AW 2-Achla, AW 3-Pokar Ram, AW 4-Laloo and AW 5-Kheta Ram have stated that the deceased was earning Rs.40-50 per day. AW 2-Achla is the father of the deceased. His statement is more relevant. Thus, in the light of these statements, statement of the wife of the deceased can not be made sole basis. Thus, it can safely be assessed that the deceased was earning at least about Rs.40/- per day. The learned Tribunal has applied the multiplier of 40 for the purpose of determining the compensation but this multiplier is on the higher side and cannot be maintained. The age of the deceased has been stated to be 20 years and that is further corroborated by the Post-mortem Report, wherein the age has been shown by doctor 20 years. Thus, looking to the age of the deceased, the multiplier of 18 is reasonable and on that basis, loss of dependency is required to be re-assessed. The income of the deceased as assessed above may be taken Rs.40/- per day that is Rs.1200/- per month and out of that, 1/3rd may be deducted towards his personal expenses, therefore, the net amount which was expected to be given to the claimants comes to Rs.Rs.800/- per month. It has come from the evidence that the claimants were dependent over his incomeof

the deceased. The claimants are widow, mother, father and one child of the deceased. Thus, the total loss of dependency comes to Rs.800x12x18= Rs.1,72,800/-. The learned Tribunal has awarded the amount of transportation of dead-body and funeral charges Rs.3000/- and further awarded Rs.25,000/- as loss of love and affection. Looking to the position of the claimants, these amounts are not exorbitant and those are to be maintained, therefore, the total compensation amount comes to Rs.1,72,800 + 3,000 + 25,000 = Rs.2,00,800/-. Thus, the total amount of compensation may be fixed Rs. 2,01,000/- inclusive of the amount awarded under No Fault Liability. To this extent, the contentions of the appellants are partly accepted and the quantum of total compensation is determined Rs.2,01,000/- in place of determined by the learned Tribunal Rs.2,20,000/- Further the penal rate of interest in case of late payment as directed by the learned Tribunal is quashed.

Thus, the appeal is partly allowed to the extent that the quantum of compensation is determined Rs. 2,01,000/- in place of Rs.2,22,000/-. Rest of the award is confirmed. The appellants are directed to make payment of balance amount of compensation with simple interest as awarded by the learned

Tribunal within a period of two months from the date of order, failing which, the claimants shall be entitled to recover the same. No order as to costs.

(MANAK MOHTA),J.